



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

February , 2004

Daniel Hill
PO Box 778
Merrimack, NH 03054

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 04-026**

RE: NASHUA, DAN HILLS TEXACO, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #M- 0110477) (DES # 199105039)

Dear Mr. Hill

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 104 Canal Street, Nashua, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 29, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on May 11, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.07 Permit-to-Operate

Env-Wm 1401.07 requires that the permit-to-operate be permanently affixed on the facility premises and visible to a division inspector. The field inspection revealed that the permit was not posted. The permit-to-operate shall be posted on the facility premises and verification in writing that the permit has been posted shall be provided to DES.

2 Env-Wm 1401.21 Tank Standards for New Underground Storage Systems

Env-Wm 1401.21 requires a UST system completed certificate be permanently affixed and visible to the division inspector at the facility premises for all new UST systems. The division inspector could not document a certificate posting. A certificate shall be posted at the facility and verification in writing that the certificate has been posted shall be provided to DES.

3 Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment device for Tank #10, 1000-gallon used oil tank, was not installed/maintained in good working order. The spill

containment device shall be installed as required/be repaired to enable the device to collect and hold a minimum 5-gallon spill during a product delivery.

4. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the installation of the overfill protection device could not be verified for the required 90% alert or 95% shut off level. Written verification shall be provided to DES that the overfill protection device has been installed at the required 90% alert or 95% shut off level.

5. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires line leak detectors to be installed on all pressurized piping systems and tested annually to confirm that they are operating according to manufacturer's recommendations. DES could not verify that the line leak detectors were installed. The line leak detector installation documentation shall be provided to DES. The DES has also determined that the passing annual line leak detector test had not been performed. A passing annual line leak detector test shall be provided to the DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not maintained compliance, consequently, should your permit be revoked the Fund will not be available to you as a financial responsibility mechanism for subsequent releases. At such time as the deficiencies listed in this Notice have been resolved and your facility has been deemed in compliance with RSA 146-C and Env-Wm 1401, you may again use the Fund as your financial assurance mechanism for future releases.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance, as requested above, is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0110477) shall be revoked effective **May 11, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this

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facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.


You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,


COPY
Lynn A. Woodard, P.E.
Supervisor
Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0584 5896

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
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